



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Health
<b>Virginia Administrative Code (VAC) citation</b>	<u>12 VAC 5 - 195</u>
<b>Regulation title</b>	Virginia WIC Program state regulations
<b>Action title</b>	Updates to Virginia WIC Program state regulations
<b>Final agency action date</b>	
<b>Document preparation date</b>	

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

Regulatory updates were made to the Virginia WIC Program state regulations; the majority of changes were made to Part III of the regulations which focus on vendor requirements. The updates in this section resulted from significant edits to the Vendor Manual for the Virginia WIC Program, in which content was removed from that source and added to the state regulations. The additional content largely expands on the current regulations and provides added detail to enrollment procedures, general requirements and conditions for retail authorization and policies regarding conflict of interest, solicitation, high risk designation, and sanctions and administrative actions.

Substantive changes regarding vendor requirements include:

- 12VAC5-195-360. Selection decisions: The process of making selection decisions are described in this section, as all retailers and applicants compete equally for available slots located in a specific city/county, or zip code. In situations when multiple stores have equal rankings and there are not enough slots to authorize all stores, the ranking criteria was changed to include two additional factors, while one existing criterion was removed. The two additional criteria for breaking ties when equal ranking exists include: 1) having the corporate representative decide on which store receives the slot, if both stores in a tie are owned by the same corporate entity, and

2) offering the slot to the store with the highest Food Stamp sales for the previous six months if both stores are **not** owned by the same corporate entity. The criterion that was removed from this section was the preference given to retailers certified by the Department of Minority Business Enterprise.

Paragraph D in this section was also added, which gives previously authorized stores a one year extension of their authorization if they compete with a newly opened, better qualified store for a slot. This one year extension will provide previously authorized stores with additional time to adjust and prepare for the loss of their WIC authorization status.

- 12VAC5-195-380. Low volume performance standard: This section, which required authorized retail stores to serve at least an average of 60 unique WIC participants a month, has been eliminated. The removal of this performance standard will especially benefit smaller stores that experience lower volume.
- 12VAC5-195-590. Reimbursement and payments: Additional detail has been added to this section regarding specific, mandatory requirements that stores must meet in order to be reimbursed, including entry of mandatory and optional food and formula prices and submission of a direct deposit form to the state agency.
- 12VAC5-195-660. Informal settlement meetings: This section has been significantly changed in order to reflect a shift in the purpose of informal settlement meetings. Initially, informal settlement meetings were part of the appeals process that retailers had access to, in response to administrative action taken by the state agency. This has been changed because the state agency intends to use these meetings as a precursor to administrative action to be held before action is taken, instead of after. By holding these meetings before action is taken, the state agency will have the opportunity to open a dialogue with retailers and may be able to avoid taking action depending on the information gathered during the informal settlement meeting.

Substantive changes regarding participant requirements include:

- 12VAC5-19-140. Food instruments: Paragraph D of this section regarding the mailing of WIC food instruments was amended to clarify that WIC food instruments will be mailed for a one month period, unless otherwise approved by the state agency. In addition, the justification for mailing of WIC food instruments was expanded to include "difficulty obtaining a complete prescription for special formula as approved by a local WIC coordinator."
- 12VAC5-195-180. Fair hearing: This section states that a WIC participant must request a fair hearing within 60 days of the written notification date of program denial, termination of benefits or claim against an individual for improperly issued benefits. Paragraph D currently mandates that participants who appeal the termination of their WIC benefits within 60 days must continue to receive WIC benefits until the hearing officer reaches a decision, the participant becomes categorically ineligible, or the certification period expires, whichever comes first. This paragraph has changed 60 days to 15 days in order to comply with federal regulations.

**Statement of final agency action**

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

Enter statement here

**Family impact**

*Assess the impact of this regulatory action on the institution of the family and family stability.*

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In federal fiscal year 2008, the Virginia WIC Program provided direct service to an average of 150,820 women, infants and children a month. The Virginia WIC Program serves women who are breastfeeding, pregnant or have just given birth; infants less than one (1) year-old and children less than five (5) years-old. WIC participants must be Virginia residents and meet the financial and nutritional requirements set forth by regulations. Financial eligibility is defined as income below 185% of the federal poverty level while nutritional eligibility is defined by risk factors such as a medical problem or an unhealthy diet. Mothers, fathers and legal guardians may apply for WIC benefits for the children in their care.

The purpose of the program is to assure healthy diets during pregnancy and breast-feeding, infancy and early childhood to age five for eligible families who might otherwise not be able to afford to eat properly. The provision of education for mothers and/or primary care-givers about healthy eating is coupled with vouchers to purchase a defined package of high nutrient foods at community groceries. Increasing attention is being paid to educating families about ways to avoid the risks of childhood obesity while assuring proper nutrition. Breastfeeding is promoted while regular and specially prescribed formulas are provided for infants who are not breastfed.

This regulatory action is necessary so that the WIC Program may continue to operate efficiently and effectively, with a transparent compliance to federal regulations. Without these regulation updates, the ability of the Virginia WIC Program to function will be compromised and so will the health of Virginia’s families.

**Periodic review**

*If this final regulation is not the result of a periodic review of the regulation, please delete this entire section. If this final regulation is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 36, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.*

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Commenter	Comment	Agency response

Enter statement here